

Message Text

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EA/IMS: ADORNHEIM (SUB)

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R 142344Z JAN 74

FM SECSTATE WASHDC

TO AMEMBASSY JAKARTA

UNCLAS STATE 008205

EO 11652: N/A

TAGS: EFIN ID

SUBJ: DARALON

ATTN: USAID RLA CLARK

ALL OUTSTANDING C/P'S MUST BE SATISFIED BEFORE NEXT ADVANCE
OF MHT LOAN, WHICH BYRD OF SPRINGS ADVISES WILL BE NEEDED
SOON. COPIES OF THIS MESSAGE ARE BEING SENT TO MKK, USAID
RLA CLARK, BYRD, HUDSPETH, IVES AND MURPHY. OPIS UNDERSTANDS
PRESENT STATUS IS:

1. MANSUR CLAIM:

(A) STATUS AND LOCATION ARE BEING REVIEWED BY MKK FOR
TELEX OPINION TO OPIC ASAP.

(B) CLAIM SHOULD BE SETTLED ON ANY LAND CLAIMED BY
MANSUR WHICH COULD POSSIBLY BE HARMFUL TO PROJECT.

(C) DARALON IMMEDIATELY SHOULD SEND UNDERTAKING TO
OPIC, DISCUSSED WITH IVES, TO ACQUIRE SUCH LAND.

2. CSD'S:

(A) FTAGMS AND POWER OF ATTORNEY ARE READY FOR
EXECUTION ONCE FA IS COMPLETED.

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(B) USAID RLA CLARK WILL NEGOTIATE WITH BNI THE

BUSINESS TERMS OF FA, WITH MKK LEGAL ASSISTANCE.

(C) SUGGESTED OUTSTANDING FA TERMS, AFTER CONSULTATION WITH BUCKMAN OF MHT, ARE:

(I) BNI FEE OF US\$2,500 PLUS OUTSIDE EXPENSES AND CONSULTANT COSTS PER YEAR OF ROUTINE WORK, US\$5,000 PLUS OUTSIDE EXPENSES AND CONSULTANT'S COSTS PER YEAR OF EXTRA WORK. OPIC FEELS EXACT FEES SHOULD BE NEGOTIATED BETWEEN BNI AND DARALON, PROVIDED THEY COVER SERVICES NEEDED BY MHT, IFC AND OPIC ("SECURED LENDERS").

(88) ROUTINE SERVICES BASICALLY INCLUDE CUSTODY OF TITLE DOCUMENTS AND INSURANCE POLICIES AND REVIEW OF ALL PROJECT PROPERTY AND SUFFICIENT DOCUMENTS TO DETERMINE THAT DARALON OWNS SUCH PROPERTY AND KEEPS IT INSURED AS REQUIRED BY FTAGMS, MLA AND IFC IA. DARALON SHOULD ADVISE BNI AND SECURED LENDERS QUARTERLY OF CHANGES IN PROPERTY OWNERSHIP AND INSURANCE. AFTER INITIAL INSPECTION, BNI SHOULD INSPECT SUCH PROPERTY AND RECORDS SEMI-ANNUALLY. PRESUMABLY DARALON AND BNI CAN AGREE ON WHAT RECORDS ARE NEEDED TO SHOW OWNERSHIP AND INSURANCE; DISPUTES SHOULD BE REFERRED TO SECURED LENDERS FOR SETTLEMENT. DARALON SHOULD IMMEDIATELY INFORM BNI AND SECURED LENDERS OF EACH SUBSTANTIAL DESTRUCTION OF PHYSICAL PROPERTY AND SUBSTANTIAL ACTUAL OR THREATENED LACK OF DARALON'S FULL TITLE THERETO, WHICH BNI SHOULD INVESTIGATE AND THEN REPORT TO SECURED LENDERS. OTHERWISE BNI SHOULD REPORT FINDINGS TO SECURED LENDERS AFTER EACH SEMI-ANNUAL INSPECTION.

(III) EXTRA WORK BASICALLY INCLUDES ACTION IN ADDITION TO INSPECTION AND REPORTING, SUCH AS OBTAINING MORTGAGE UNDER POWER OF ATTORNEY, TAKING ANY KIND OF JUDICIAL OR ADMINISTRATIVE ACTION TO PROTECT SECURED LENDERS, AND ALL ASPECTS OF FORECLOSURE.

(D) BEFORE REPEAT BEFORE APPROACHING BNI, PLEASE COMMENT ON 2(C) ASAP. WE WILL WANT CLARK TO START DISCUSSIONS WITH BNI QUICKLY, AND WILL ADVISE HIM.

3. STAMP TAX:

(A) UNDERSTAND DARALON THROUGH UTOMO IS NOW DISCUSSING WITH GOI TAX AUTHORITIES EXEMPTIONS FOR MLA AND ITS NOTES AND DPA AND ITS DEBENTURES FROM STAMP TAX PAYABLE NOW OR UPON LATER ENFORCEMENT OF ABOVE DOCUMENTS IN INDONESIA.

(B) MKK SHOULD GIVE NEW COMPLETE STAMP TAX OPINION TO OPIC AND MHT AFTER FOREGOING DISCUSSIONS COMPLETED.

(C) OPIC UNDERSTANDS FOLLOWING RULES APPLY:

(I) NORMAL TAX IS ONE HALF PERCENT OF PRINCIPAL.
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(II) NO TAX IS PAYABLE AT ANY TIME ON NOTES OR DEBENTURES, BUT ONLY ONCE ON MLA AND DPA.

(III) TAX MUST BE PAID NOW OR MLA SINCE IT IS COVERED BY POWER OF ATTORNEY TO IMPOSE MORTGAGE AND BY FTAGMS; IF NOT PAID NOW, TAX DOUBLES TO ONE PERCENT OF ORIGINAL PRINCIPAL.

(IV) TAX MUST BE PAID ON MLA AND DPA TO ENFORCE THEM OR THEIR NOTES OR DEBENTURES IN INDONESIA; NONE OF THEM ARE ENFORCEABLE NOW.

(C) TO EXTENT PERMANENT EXEMPTION IS NOT OBTAINED UNDER
3(A), TAX PAYMENT MUST NOW BE MADE OR PROVIDED FOR IN MANNER
SATISFACTORY TO OPIC.
REQUEST EMBASS DELIVERY COPIES OF THIS TELEGRAM TO HUDSPETH OF
DARALON AND DARMAWI OR GRANUCCI OF MKK. RUSH

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